

Served: May 28, 1992

NTSB Order No. EA-3580

UNITED STATES OF AMERICA  
NATIONAL TRANSPORTATION SAFETY BOARD  
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 19th day of May, 1992

BARRY LAMBERT HARRIS,  
Acting Administrator,  
Federal Aviation  
Administration,

Complainant,

SE-12470

v.

BRUCE W. MCGHEE,

Respondent.

OPINION AND ORDER

Respondent has appealed from the oral initial decision of Administrative Law Judge Joyce Capps, rendered at the conclusion of an evidentiary hearing on April 10, 1992.<sup>1</sup> The law judge affirmed an emergency order of the Administrator revoking respondent's private pilot certificate for several alleged violations of the Federal Aviation Regulations ("FAR," 14 C.F.R. Parts 61 and 91).<sup>2</sup> Respondent

---

<sup>1</sup>An excerpt from the hearing transcript containing the initial decision is attached.

<sup>2</sup>Respondent is alleged to have violated the following FAR sections:

has appealed, arguing that revocation was an inappropriate sanction in this instance. For the reasons discussed below, we deny the appeal and adopt the findings of the law judge as our own.

The Emergency Order of Revocation, which served as the complaint in this proceeding, alleges, in pertinent part:

- "1. You are the holder of Airman Certificate No. 025204841, with Private Pilot privileges.
2. You do not, nor at any relevant time did you, hold a rotorcraft rating.
3. During the period from approximately April 11, 1989, to July 2, 1991, you owned and operated a Bell Helicopter, Model 47G5A, civil registration N1343X.

(..continued)

91.203(a)(2), for operating an aircraft without an effective U.S. registration certificate issued to its owner;

91.313(a), for operating a restricted category civil aircraft for other than the special purpose for which it is certificated;

91.409(a), for operating an aircraft which had not had an annual inspection within the preceding 12 calendar months;

91.7, for operating an aircraft in an unairworthy condition;

61.3(c), for operating as pilot-in-command of an aircraft without having a current medical certificate;

61.31(d)(2), for operating as pilot-in-command of an aircraft in solo flight when he had not been found competent by a certificated flight instructor to solo that category and class of aircraft; and

61.60, for failing to notify the FAA, Airman Certification Branch, in writing within 30 days of a change of permanent mailing address.

The law judge affirmed all but the section 61.3(c) violation.

4. At all relevant times N1343X was limited by its Special Purpose Airworthiness Certificate as a Restricted Use Aircraft for use in agriculture and pest control.
5. During the late spring and early summer of 1990, you operated N1343X for the purpose of hauling lumber and other building supplies in the vicinity of the Millinocket Regional Airport.
6. Said operation was contrary to the Special Purpose Airworthiness Certificate issued to N1343X.
7. During the period from April 11, 1989, to [April 29], 1989, you operated N1343X without an effective registration certificate.<sup>3]</sup>

\* \* \* \*

12. On April 19, 1989, [a] Certificated Flight Instructor ... made the following entry in your pilot logbook:  
     Mr. Bruce McGhee is competent to make solo flights (App + Take offs) at Augusta Airport in a Bell 47G5A.
13. Subsequent thereto, you operated N1343X as pilot-in-command, in solo flight outside the area specified by your flight instructor.

\* \* \* \*

14. On December 20, 1988, N1343X received an annual inspection.
15. The next annual inspection for N1343X became due on December 31, 1989.
16. As of September 30, 1991, N1343X had not received an annual inspection since December 20, 1988.
17. During the period from January 1, 1990, to July 2, 1991, you operated N1343X while out of annual inspection and while N1343X was in an unairworthy condition."

---

<sup>3</sup>The date in paragraph 7 of the complaint was corrected at the hearing.

The law judge stated that the violations, taken alone, would not warrant revocation, but viewed together, indicate that respondent has "no respect whatsoever for the dictates of the regulations." We agree with this assessment.

Respondent sets forth several arguments in his appeal. First, he claims that the law judge erred in refusing to grant his motion to dismiss the Administrator's complaint for failure to meet the six-month requirement of Rule 33 of the Board's Rules of Practice (the stale complaint rule).<sup>4</sup> He further contends that his case was prejudiced because when the law judge found the complaint alleged a lack of qualification, she neglected to inform him whether she was referring to all the charges in the aggregate, or just one or more specific charges.

Consistent with Rule 33, the allegations in the complaint may be considered together when determining whether lack of qualification is an issue. See Administrator v. Konski, 4 NTSB 1845 (1984).<sup>5</sup> A specific instruction that the hearing will proceed on the lack of qualification issue alone

---

<sup>4</sup>49 C.F.R. § 821.33. Under this rule, the six-month time limit does not apply if the allegations set forth in the complaint present an issue of lack of qualifications.

<sup>5</sup>In Konski, we stated that "the question of whether a lack of qualification issue is presented should involve a consideration of the pleaded incidents in the aggregate rather than a consideration of the incidents, one by one...." Id. at 1847. See also Administrator v. Wingo, 4 NTSB 1304, 1305 (1984)("[I]n order to avoid dismissal under the stale complaint rule, the allegations in the complaint need only present an issue of lack of qualifications.")(Emphasis in original.)

is not required. Administrator v. Muscatine Flying Service, Inc., 5 NTSB 1785, 1789, appeal denied, 822 F.2d 1094 (1987).

In the instant case, the complaint itself, as the law judge acknowledged, clearly called into question whether respondent was qualified to hold a private pilot certificate.

Consequently, the law judge denied respondent's motion to dismiss under Rule 33. We think that denial gave respondent sufficient notice that an issue of qualification had been presented, and that, at the ensuing hearing, he would have to defend against the charge that he lacked the qualification necessary to hold a certificate.

Respondent challenges the law judge's finding that he violated FAR section 61.31 by operating his helicopter outside the specifically authorized area. He claims that he was qualified to fly solo in the helicopter because he had previously logged military flight time. No evidence was presented at the hearing, however, to illustrate what type of military flight experience respondent had, or whether it ever was applied to a civilian airman certificate. An FAA inspector testified that military time is not automatically transferable towards a civilian certificate, but can only be utilized if properly applied within 12 months of discharge from the military. A preponderance of the substantial, reliable, probative evidence, such as entries in respondent's logbook and testimony of witnesses, forms a solid evidentiary

basis in the record for the law judge's decision.<sup>6</sup>

In view of the foregoing, we find that the record supports the law judge's determination. Respondent's actions, taken in the aggregate, illustrate a blatant disregard for the FARs. Revocation, although a severe sanction, nevertheless is appropriate when respondent has demonstrated a "lack of care, judgment, and responsibility." Administrator v. Hilburn, 5 NTSB 2464, 2467 (1987).

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's appeal is denied;
2. The initial decision is affirmed; and
3. The emergency order of revocation is affirmed.

COUGHLIN, Acting Chairman, LAUBER, KOLSTAD, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

---

<sup>6</sup>Respondent remarks that the law judge calculated incorrectly as 16 the number of times respondent operated the helicopter without a valid registration certificate. In his reply brief, the Administrator concedes that the correct number of flights is 7, yet asserts that the error is harmless. We agree.

In addition, respondent argues that his violation of FAR section 91.203(a)(2) for operating N1343X when the registration certificate was out of date was "essentially technical in nature." He maintains that as soon as he realized the aircraft was not registered, he submitted the necessary paperwork to the FAA. This action, however, does not negate respondent's accountability for flying the aircraft without a current registration. Technical or not, respondent was responsible for ascertaining whether his aircraft was in compliance with the applicable FARs.